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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,118	03/31/2004	Marc Ramet	237988US26	3712
22850	7590	02/03/2006	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.			WALCZAK, DAVID J	
1940 DUKE STREET			ART UNIT	
ALEXANDRIA, VA 22314			PAPER NUMBER	

3751

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/813,118

Applicant(s)

RAMET, MARC

Examiner

David J. Walczak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-17, 19-21, 26-29 and 31-51 is/are rejected.
- 7) ☒ Claim(s) 8, 9, 18, 22-25 and 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/31/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

Claim 32 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not adequately define how the applicator is disposed outside of the reservoir when in the retracted position, i.e., when the applicator is retracted (the position of the applicator when the cap is placed on the reservoir), it appears that the entire applicator is within the reservoir.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 10-12, 14-17, 19-21, 26-29, 31-42 and 45-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Almond, II (hereinafter Almond). In regard to claim 1, Almond discloses a dispensing and packaging device comprised of a reservoir 13 containing a product 33 and having an opening (through flange 14, see Figures 6 and 7), a cap 12, an applicator 15 loaded with the product, a first means 16 connecting

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the applicator to the cap and a second means 18, 32 connecting the other end of the applicator to the reservoir. In regard to claim 2, the first means 16 is integral with the cap. In regard to claims 3 and 5, the applicator remains connected to the first and second means (and thereby the cap and reservoir) during use (see Figure 3). In regard to claim 4, the second means 18 is "capable" of being braced obliquely through the opening, i.e., if disassembled, element 18 is capable of fitting through the reservoir. In regard to claim 6, the second means includes a support 22 movably mounted in the reservoir and connected to the applicator. In regard to claim 7, the support includes a retaining means 20 which engages with a "counterpart arrangement" on the reservoir such that the counterpart arrangement prevents the support from being dislodged. In regard to claim 10, the applicator is concealed in the reservoir and immersed in product when the cap is fitted onto the reservoir. In regard to claims 11 and 12, the applicator is drawn out by the cap when the cap is disengaged from the reservoir. In regard to claim 14, the applicator is flexible and can be "applied elastically" (at least to some degree) against a curved surface. In regard to claim 15, the first means is rigid and thereby is able to position an end of the applicator. In regard to claim 16, the first and second means "cooperate" to insert the applicator when the cap is mounted to the reservoir. In regard to claims 17 and 29, the product is a lotion, which can be considered a "cosmetic" as lotions commonly enhance the appearance of skin. In regard to claims 19 and 20, the second means includes a "rigid portion" 32 which extends from the reservoir during use. In regard to claims 21 and 26, the second means 18 includes a flange portion 19 and /or 20 that prevents the second means from dislodging. In regard to

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claim 27, the applicator is movable as claimed. In regard to claim 28, the applicator is flexible. In regard to claim 31, Almond discloses a dispensing device comprised of a reservoir 13, cap, 12, applicator 15 and a flange portion 22 in the reservoir which cooperates with the end of the applicator as claimed. In regard to claim 32, the applicator is outside of the reservoir in the extended position and a portion of the applicator remains outside of the reservoir when partially retracted. In regard to claim 33, rigid portion 32 extends from the flange portion and out of the reservoir when the applicator is extended. In regard to claim 34, the reservoir includes the claimed "counterpart portion" (the housing) which abuts the flange to prevent the flange and the applicator from dislodging. In regard to claim 35, the "counterpart portion" includes the aperture through which the rigid portion 32 extends. In regard to claim 36, the applicator is connected to another rigid portion 16 wherein the rigid portion can "assist" in the positioning of the applicator. In regard to claims 37 and 39, the applicator is wiped (via element 28) as it passes through the aperture while the rigid portion 32 passes through the aperture. In regard to claim 38, the other rigid portion 16 is coupled to the cap. In regard to claim 40, the applicator is coupled to the cap as claimed. In regard to claim 41, a first rigid portion 16 is coupled to the cap and the applicator and a second rigid portion (the outer surface of element 22) is coupled to the flange portion 22 and the applicator whereby the first and second rigid portions can "assist" in positioning of the applicator. In regard to claim 42, as discussed above, the reservoir includes a "counterpart portion". In regard to claims 43-49 and 50, as discussed supra, the reservoir includes the claimed structure.

Claims 1, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones. Jones discloses a dispensing and packaging device comprised of a reservoir 14, a cap 10, 19, an applicator 12 and first and second means for connected the applicator to the cap and reservoir wherein the applicator will be drawn out when the cap is disengaged and wherein the cap is screwed onto the reservoir.

### ***Allowable Subject Matter***

Claims 8, 9, 22-25, 30 and 51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Katsandres et al. and Kuehne references are cited for disclosing other retractable applicators.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
2/1/06